UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA, New York, N.Y.

v. 16 Cr. 467(ALC)

NORMAN SEABROOK and MURRAY HUBERFELD,

Defendants.

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January 6, 2017
11:50 a.m.

Before:

HON. ANDREW L. CARTER, JR.,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: KAN M. NAWADAY
MARTIN S. BELL
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BRACEWELL, LLP
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BY: EVAN L. LIPTON

THE DEPUTY CLERK: Criminal cause for a status conference in case number 16 Cr. 467. United States v. Norman Seabrook, *et al.*

Counsel, please state your appearance for the government.

MR. NAWADAY: Good morning, your Honor. Kan Nawaday, Lauren Schorr, and Martin Bell for the government.

THE DEPUTY CLERK: And for the defendants.

MR. MAZUREK: Good morning, your Honor. Henry Mazurek and Evan Lipton, on behalf of defendant Murray Huberfeld, who is present before you.

MR. SCHECHTMAN: Good morning, your Honor. Paul Shechtman, for Mr. Seabrook, who is present, as well.

THE COURT: Okay. Good morning.

What is the status of this matter?

MR. NAWADAY: Your Honor, today we are on for a status conference. I believe all the parties would like to ask for a trial date today. I think there is some disagreement about when that trial date should be.

I will explain to your Honor where the government is with discovery. The government provided discovery starting in July 2016. We basically finished our discovery productions in the fall of 2016; however, recently, in December, 2016, there was an indictment that came down which indicted several former colleagues of defendant Murray Huberfeld at Platinum Partners, a hedge fund which was founded by defendant Murray Huberfeld in this case.

Mr. Huberfeld has not been indicted in that case; however, the prosecutors in the Eastern District of New York executed a search warrant at Platinum Partners, the hedge fund, which figures in this case. Their search warrant was more expansive than the materials we had in our case. We provided e-mails from Platinum Partners to the defendants in this case relating to the charges in this case; however, now there is another world of materials from Platinum Partners from the Eastern District of New York case.

Given that, we have conferred with the Eastern District prosecutors. We are endeavoring to obtain those materials and provide them to the defendants here. We don't necessarily know what relevance, frankly, if any, those materials add to the facts of this case. That case is a securities fraud case. This case, as your Honor, is aware is a bribery case. However, because those materials are there, we are endeavoring to get those materials.

Given that, while initially we had been prepared to ask for very speedy trial date, given these new materials, we would ask for a trial date late summer or the fall of this year. We would also ask for another conference in April, at your Honor's convenience, where we can come back, let your Honor know where we are with the production of the new materials and hopefully set a motion schedule at that point.

THE COURT: Okay. Let me hear from the defense counsel.

MR. SCHECHTMAN: Good morning, your Honor. Mr. Seabrook and I are still on the side of a speedy trial in this case. He was arrested, as your Honor knows, back in June. We have had the discovery material, we have been through it, and we are ready to try this case March 1. We could actually try it sooner if we had to, but March 1 is a reasonable date just in terms of the complexities of life.

The material in the Eastern District, as far as we can tell, has absolutely nothing to do with Mr. Seabrook. It doesn't implicate it, it doesn't exculpate him, it doesn't inculpate him. I think the government was good enough to say that, frankly, they don't know if there is anything there.

And so we have boxes and boxes of documents that, to be honest, we have told the government we have no intention of reviewing. So we are going to sit for months if we do this to look at documents that don't touch this man. Mr. Seabrook has been on hold, his life has been on hold, his job has been on hold, his paycheck has been on hold, and we would like to go to trial on March 1 in this matter. I can't stress enough that your Honor has a very good sense, more than many judges, of how hard it is to be a defendant. It is particularly hard to be a defendant who is sidelined, and that's where Mr. Seabrook has been since June.

MR. MAZUREK: Judge, on behalf of Mr. Huberfeld, our opinion differs somewhat from my esteemed colleague, Mr. Shechtman. The materials that have not been produced to date do relate or possibly may relate to Mr. Huberfeld; and to the extent that the government is not saying, as I hear them, that they are not willing to forego any review of that material which may or may not include relevant evidence relating to this trial, I do think that the material needs to be reviewed.

Not only that, the material contains electronic stored information Platinum Partners. Platinum Partners is the hedge fund that was invested by the Global Pension Fund during the relevant time period. We believe there was an extensive due diligence done by the COBA pension fund of Platinum Partners and also that Platinum Partners did a lot of work in showing the relevance of the fund, the opportunities, and the financial analysis of the fund to COBA, which all was done in a way that these materials may show was entirely appropriate and not based on the way that the government believes that the investment was made. So I think I would have an obligation to review that material for potentially exculpatory material, in any event, since it is in the government's possession and would be available to the government at any potential trial in this matter.

So I do think that we need to have that review and, to the extent there is information in it that the government believes they want to introduce at any trial against Mr. Huberfeld, we would have the opportunity -- should have the opportunity to review how those searches were conducted, how the warrants were obtained, and that would be relevant to potential pretrial motions. So I do think that we need to review that material before going forward.

Also, with respect to a March trial date, I do believe that there are motions that are relevant in this case on behalf of Mr. Huberfeld which would need to be filed with respect to other searches that were done by the Southern District of New York, both at his personal residence and at his office. In addition, there were a number of search warrants issued as to e-mail addresses that some of which were Mr. Huberfeld would have standing.

I would concur with the government's proposal setting this down for a fall trial date, which will enable all the parties to litigate efficiently and also proceed to motions.

MR. SCHECHTMAN: Judge, I won't belabor this issue, and I have got a rule that it's really not good defense lawyering for the two of us to be at odds. We are already at odds with them.

But, just so the court knows, we have all the material showing what Platinum presented to COBA, to the Corrections Officers' union. It has all been made available to us.

And in terms of search warrants, nobody has standing as to that, so that won't generate any searches.

And in terms of the searches in this case, I asked the government whether they intend to offer any material from those searches. The answer may well be no. They are going to review it. But this isn't a search warrant case. It is, at the end of the day, a one-witness case. Your Honor will see what I hope are some very good cross-examinations of one witness, but if you tell me they are motions and we need to go to April, I will move to April, but it's just not fair to somebody to be on the sidelines because of documents in the Eastern District that, at the end of the day, there is going to be no there there. So we just beseech the court to see if there is some way to get this case to trial more quickly.

THE COURT: Let me get a sense from the government as to the expected length of this trial; and if there is a difference in terms of the length of the trials if it were solely with one defendant as opposed to the other --

MR. NAWADAY: Both trials would be the exact same length of one week.

THE COURT: One week?

MR. NAWADAY: Yes, your Honor, for the government's presentation, of course.

THE COURT: And do defense counsel at this point have a sense of how long the trial would take for their prospective clients?

MR. MAZUREK: Judge, I would say that that estimate, sometimes I think the government forgets that there is cross-examination of those witnesses. I expect that particularly the main government cooperator here will be on the stand for multiple days on cross-examination. So I think that the one-week trial estimate is not really fair or reasonable. I think that this trial would last at least two weeks and probably go into a third week.

MR. SCHECHTMAN: Judge, I would doubt the third, but I would think the second is quite likely. The nature of this cooperator is -- and we will coordinate, we are not going to ask the same questions, but the nature of this cooperator is you are going to have lengthy cross-examination, so I would think the court should expect a two-week trial.

MR. MAZUREK: And, Judge, also, not to throw another monkey wrench in all of this, I have a May 15 trial date set in front of Judge Koeltl that's already been set six weeks ago. That case is definitely proceeding to trial.

THE COURT: Okay. So for counsel for Mr. Seabrook, let me hear a little bit more from you as to what your position is. Do you wish to file a motion to sever? I don't know if it makes sense in terms of judicial economy to sever this case, even though these trials are anticipated to be relatively quick. But what's your position on that?

MR. SCHECHTMAN: Judge, I walked in this morning hoping I could find at least one ally among the other parties, and I said to Mr. Seabrook, if we don't and the case is put out for the others for a long period, that we are going to huddle and consider a severance motion. We may make it. It is very hard to be sitting still for this period, unemployed, no income coming in, and ready for a case that really is at its core a cross-examination of one witness and a lot of fluff in terms of cooperation. Your Honor should know the other witnesses in this case, right, I think the cross-examination is going to be, You don't know Mr. Seabrook. So I think at the end of the day it is a one-witness case, and it is hard to think -- and I say this respectfully, and I understand we have got a trove of -- I don't know what the opposite of a treasure trove of documents in the Eastern District, but we have got a June arrest and we are talking about not getting a one-witness case to trial before the fall, and that's very difficult for Mr. Seabrook.

THE COURT: Let me hear from the other counsel about the propriety of perhaps a severance motion or a severance in this case.

Counsel.

MR. MAZUREK: Judge, I don't have I think a particular position. I think if Mr. Seabrook wishes to proceed with a speedy trial, then I think he would need to make the appropriate showing, but we certainly would not object to one.

I understand the concerns that Mr. Shechtman has brought on behalf of his client, but I have to protect the interests of my client, and that very well may include -- I do believe it includes the appropriate filing of motions. I do think pretrial motions are appropriate here. And I also have to review the materials from Platinum because my client is associated with Platinum and Platinum is the firm to which the investment was made. A large part of our defense will show that in fact the conduct here by my client was in no way what the government suggested; instead, it was a legitimate business investment that was actually reviewed by multiple parties, parties, personnel within Platinum Partners, and also within the pension fund. That's all relevant to the defense and undermines what I believe will show is not a truth-telling cooperating witness.

THE COURT: Okay. Let me hear from the government.

MR. NAWADAY: Your Honor, the government would of course strenuously object to any severance in this case. It would be wholly inefficient. The same witnesses would be called for both trials, and to have to do it twice would just be wholly inefficient for everybody. So we would strenuously object to any severance motion. But of course we will await Mr. Seabrook's motion on that, if any.

THE COURT: So it seems to me that what makes sense at this point is to go ahead and set a trial date for the late summer/early fall; and, in the meantime, I will give counsel for Mr. Seabrook some time to think about whether or not you wish to file a severance motion. If so, then I will deal with that.

But let's go ahead and get a trial date. So it seems that both sides are in agreement that this trial would -- both sides indicate they think the trial will take no longer than three weeks. Are we talking about the trial will take no longer than three weeks in terms of simply testimony in this case or testimony and anticipated deliberation time?

MR. SCHECHTMAN: I think, even with deliberations, three weeks is an outside estimate.

MR. NAWADAY: We agree.

MR. MAZUREK: I defer to my colleagues on that. Generally my experience is, especially in multi-defendant cases, they take some time to try. I think there are some documents involved here that will not make things go in the quickest way, and I do believe that the cross-examination of the government's cooperating witness may take four or five trial days in and of itself. But, that being said, I think we can try the case in three weeks. I can't tell how long the deliberations may be.

The one issue, Judge, with respect to the fall trial dates are the Jewish holidays, so I just want to alert you to that. They begin on September 20 with Rosh Hashanah and extend until October 13 through the end of Sukkot. There will be multiple days during that time period when my client would not be able to attend court because of religious observances.

MR. SCHECHTMAN: Judge, without -- I appreciate what your Honor said, and we will consider it. Without waiving anything, is it possible to start this trial in the early part of August? Because if we don't start in the early part of August, we are starting this in November, and that really is a long way out.

THE COURT: We could. I don't know if we necessarily need to start it in November. I think what counsel indicated is that Sukkot ends around October 13.

MR. MAZUREK: So we could start on Monday October 16.

THE COURT: So we could certainly start the following week, which probably makes more sense in terms of availability of jurors and the like. In August it gets a little tough, because a lot of people go on vacation, have vacations planned.

So let's say October 16. Do counsel know offhand, do the holiday goes all the way through the 13th? Obviously I am trying to set a date for a final pretrial conference. I wouldn't want to put that on the 13th, if that's a holiday. Is the 12th a date that works for counsel?

MR. MAZUREK: No, the 11th through the 13th of October is not -- I mean there are holidays. Maybe the 9th or 10th.

THE COURT: I think the 9th is probably a holiday. I think the 9th is --

MR. NAWADAY: Columbus Day.

THE COURT: Columbus Day or Indigenous Peoples Day, however you want to call it.

So how about --

MR. MAZUREK: The 10th?

MR. SCHECHTMAN: Can you do the week before, your Honor.

THE COURT: I think that might make sense. How about the 6th? Is there a holiday on the 6th of September?

MR. MAZUREK: Yes, unfortunately October 4 through 6th is the beginning of Sukkot.

THE COURT: How is the 2nd or 3rd? Why don't we do this, then, let's do this. Let's start the trial on Wednesday, October 18, and let's have the final pretrial conference on Monday, October 16. Does that work for everyone?

MR. MAZUREK: Yes. Starting the 18th?

THE COURT: Yes, October 18.

MR. SCHECHTMAN: Judge, there was some talk among counsel of perhaps picking a day in April just to get together to see -- it may be that we all decide that the Eastern District documents are either unwanted or not forthcoming and just to have a control date might be useful.

THE COURT: Okay.

MR. MAZUREK: I am checking Passover.

MR. SCHECHTMAN: Mr. Seabrook respects all these holidays, but he doesn't celebrate any of them.

MR. MAZUREK: The week of April 3 would be best because Passover is the following week.

MR. SCHECHTMAN: I think that's fine, your Honor. Let me just check. Any date that week is fine.

THE COURT: How about Friday, April 7, at 10:00?

MR. SCHECHTMAN: That's fine.

MR. MAZUREK: It is Shabbos. Could we do it other than a Friday, your Honor?

THE COURT: Sure. How about April 6 at 1:00?

MR. MAZUREK: Yes.

THE COURT: Does that work for everyone?

MR. MAZUREK: I apologize for all the calendar conflicts.

THE COURT: So we will schedule this matter for April 6, 1:00. We have a trial date of October 18 for jury selection and trial at 9:30. We will have a final pretrial conference on October 16 at 9:30, and we will get other interim dates as time goes on.

Based on the representations made by counsel in open court, I will exclude time under the Speedy Trial Act from today's date until October 18, so that counsel may review the discovery in this matter as well as make any determinations as to whether or not there are any motions they wish to file. I find that the interest of justice and the interest of the defendants outweigh the public's interest in a speedy trial, and I will enter an order to that effect.

Is there anything else from the government?

I guess before I ask that, does it make sense to just have a date for a joint status report or something of the like so I can get a sense from counsel for Mr. Seabrook if you plan to make a motion, that we can set a schedule for that? I assume if you want to make a motion, you will want to make it before April.

MR. SCHECHTMAN: That's totally sensible, your Honor. If we could have until Friday, next Friday, which I guess is the -- let me just get my calendar out -- would be the 13th, we will try to let your Honor know by letter, and if we are going to file it, we will suggest probably a couple of weeks to file.

THE COURT: Okay. So let's just get a joint status report. Counsel don't need to come to court. We won't have a court conference on January 13. It will primarily be directed by Seabrook's counsel, who is letting us know if you wish to file any motion for severance.

MR. SCHECHTMAN: I thank the court.

THE COURT: Anything else from the government?

MR. NAWADAY: No, your Honor.

THE COURT: Anything else from either defense counsel?

MR. MAZUREK: No, your Honor.

MR. SCHECHTMAN: I do, your Honor. Not having -- not won anything this morning, I thought I might request the court, on consent, if Mr. Seabrook's bail limits could be extended to Connecticut. He has friends there and just would like to go up and spend some time there, and I think it's a consent issue.

THE COURT: Government have any position on that?

MR. NAWADAY: No objection.

THE COURT: Okay. I will grant. That send me the appropriate letter, and I will sign off on it.

MR. SCHECHTMAN: That sounds great, your Honor. Thank you.

THE COURT: Have a good day.

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